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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91178539
Party	Defendant Omnisource DDS, LLC
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Date	09/16/2008
Attachments	AQUAJETT - Answer to 2nd Amended NOA - FINAL.pdf (4 pages)(29754 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SmithKline Beecham Corporation
Opposer,

v.

Omnisource DDS, LLC,
Applicant.

Opposition No. 91178539

Application Serial No. 78893144

Mark:

AQUAJETT

ANSWER TO SECOND AMENDED NOTICE OF OPPOSITION

The following is the Answer of Omnisource DDS, LLC (hereinafter “Applicant”), owner of Federal Trademark Application Serial No. 78893144 for the mark AQUAJETT, by and through Counsel, Erik M. Pelton & Associates, PLLC, to the Second Amended Notice of Opposition, in regards to Opposition No. 91178539.

Applicant hereby responds, solely for the purpose of this proceeding, to each of the grounds set forth in the Second Amended Notice of Opposition, as follows:

1. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 1 of the Second Amended Notice of Opposition.

Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

2. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the Second Amended Notice of Opposition.

Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

3. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of the Second Amended Notice of Opposition.

Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

4. Applicant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 4 of the Notice of Opposition. In particular,

Applicant can neither admit nor deny that Opposer is the true owner of the referenced mark or that the alleged assignment was valid. Since Applicant can neither admit nor deny the paragraph as written, Applicant must deny.

5. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

6. Admitted.

7. Denied.

8. Denied.

9. Denied.

10. Denied.

11. Denied.

12. Denied.

13. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

14. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

15. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

16. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

17. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

18. Admitted to the extent the records of the U.S.P.T.O. substantiate the facts alleged.

FURTHERMORE, Applicant sets forth the following in support of its defense:

19. Applicant had a bona fide intent to use its mark in commerce at least as early as the filing date of the application to register the AQUAJETT mark.
20. Applicant's mark and Opposer's mark are not confusingly similar.
21. AQUA- is descriptive when used in connection with Opposer's goods.
22. AQUA- is diluted in connection with Opposer's goods.
23. Applicant's AQUAJETT mark is different in sound, appearance and meaning in comparison with each of Opposer's marks.
24. Applicant's AQUAJETT mark creates a different overall commercial impression in comparison with each of Opposer's marks.
25. Applicant's mark is not likely to cause confusion, deception or mistake with regard to each of Opposer's marks.
26. Upon information and belief, Opposer's marks are not famous.
27. Applicant's registration of AQUAJETT will not cause dilution of any Opposer's marks.

Dated this 16th day of September, 2008.



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Attorney for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of ANSWER TO SECOND AMENDED SECOND AMENDED NOTICE OF OPPOSITION has been served on the following by delivering said copy on September 16, 2008, via First Class Mail, postage prepaid, to counsel for Opposer at the following address:

Glenn A. Gundersen
Dechert LLP
Cira Centre, 2929 Arch Street
Philadelphia, PA 19104-2808

By: 

Erik M. Pelton, Esq.